

When recorded, mail to:
City Clerk
City of Maricopa
PO Box 610
Maricopa, Arizona 85239

AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY

THIS AGREEMENT is entered into this ___ day of _____, 2007, by and between _____ (“Owner”), whose address is _____ and the City of Maricopa, an Arizona Municipal Corporation, (“City”). **[Note: separately identify all owners here, and have all owners sign]**

RECITALS

A. The Owner[s] own[s] certain real property located within the City. This real property is depicted and legally described in the attached Exhibit A, incorporated into this Agreement by this reference (“Property”); and

B. The Owner[s] [has/have] requested that the City enact a certain land use change directly applicable to Owner’s Property; and

C. In November of 2006, Arizona voters approved passage of Proposition 207, the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, (the “Act”) which allows a property owner to seek compensation if any land use law enacted after the date property is transferred to the owner reduces the fair market value of that property; and

D. The Act specifically recognizes that private property owners can enter into agreements with political subdivisions to waive any claim for diminution in value of property; and

E. Arizona law, A.R.S. § 9-500.05, also authorizes the City and the Owner[s] to enter into a development agreement relating to the development of the Property; and

E. In response to the Owner’s request the City Council of the City of Maricopa [has held a public hearing and a first reading of Ordinance _____ to rezone the Property subject to certain stipulations and conditions,] [will consider Resolution _____, an amendment to the Regional Land Use and Transportation Plan] [the Planning and Zoning Commission of the City of Maricopa will consider a Conditional Use Permit] a copy of which is attached hereto as Exhibit B and incorporated by this reference, which [Ordinance/Resolution/Use Permit] embodies a new land use law applicable to the Property that modifies the Owner’s existing rights; and

F. The parties seek to avoid any potential argument that the enactment of the [Ordinance/Resolution/Use Permit] is a land use law that will reduce the fair market value of the Property or constitute a diminution in value of the Property entitling any of the owners of the Property, now or in the future, to seek compensation; and

G. The Owner and the City agree that adoption of this land use change pursuant to the terms of the [Ordinance/Resolution/Use Permit] will result in aesthetic, planning, and economic benefits to the City and its residents, and the Owner has independently determined and believes that adoption of this land use change will be beneficial to the Owner and will increase the fair market value of the Property; and

H. Owner is aware that, as a condition of receiving approvals under the City's land use laws, the City may impose various requirements, conditions, and stipulations upon the Property that will govern development of the Property; and

I. Owner[s] acknowledge[s] that [they] are under no compulsion, economic or otherwise, to enter into this Agreement.

THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Terms of [Ordinance/Resolution/Use Permit]. Upon approval by the [City Council/Planning and Zoning Commission] of the City of Maricopa, the Owner[s] of the Property, as well as their agents, successors, and assignees, hereby agree[s] to be subject to all the terms, conditions, and stipulations of [Ordinance ____/Resolution ____/Use Permit ____]. The Applicant and City agree that this Agreement shall run with the Property.

2. Waiver and Release. Owner(s) hereby waive[s] and fully release[s] any and all financial loss, injury, claims and causes of action that the Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Act in connection with the application of the City's land use laws, including [Ordinance ____/Resolution ____/Use Permit ____], to the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act as it exists or may be enacted in the future or that may be amended from time to time with regard to the subject Property.

3. Indemnification. Owner agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees or costs under the Act that they may have, as a result of the application of the City's land use laws upon the Property, now or in the future.

4. Legislative Acts. This Agreement in no way acquiesces to or obligates the City to perform any legislative act.

5. Entire Agreement. This Agreement, any Exhibit attached hereto, and any addendum executed by the parties collectively shall constitute the entire understanding and agreement of the parties and shall supersede all prior agreements or understandings between the parties with respect to the subject matter thereof. This Agreement may not be modified or amended except by written agreement of the parties.

6. Choice of Law; Venue. This Agreement shall be governed by the laws of the State of Arizona. Owner and City agree that venue for an action commenced under this Agreement shall only be proper in a court of competent jurisdiction located in Pinal County, Arizona, and the parties hereby waive any objection to such venue.

7. Attorneys' Fees. If any legal action is brought by either party to enforce any provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

8. Cancellation of Agreement. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

9. Recordation. Within ten (10) days after the execution of this Agreement by the City, the City Clerk shall cause this Agreement to be recorded in the Official Records of Pinal County, Arizona.

10. Severability. If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

11. Successors and Assigns. This Agreement shall run with the land and shall be binding upon all present and future owners of the subject Property.

12. Ownership; Signatures. Owner(s) warrant(s) and represent(s) that Owner is the owner of fee title to the Property, and that no other person(s) have an ownership interest in the Property. The person(s) who sign this Agreement on behalf of Owner(s) personally warrants and guarantees to the City that [they] have the legal power to bind Owner to this Agreement.

Dated this _____ day of _____, 2007,

[PROPERTY OWNER]

CITY OF MARICOPA, an
Arizona Municipal Corporation

By: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

State of Arizona)
) ss
County of Pinal)

SUBSCRIBED AND SWORN to before me this ____ day of ____, 2007, by
_____.

My commission expires:

Notary Public

Exhibit A

DESCRIPTION OF THE SUBJECT PROPERTY

Exhibit B

COPY OF RELEVANT ORDINANCE/RESOLUTION/USE PERMIT, INCLUDING
ALL APPLICABLE STIPULATIONS